

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Tracy Bennett, #299308,)	
)	C/A No. 4:10-0075-MBS
Petitioner,)	
)	
vs.)	
)	ORDER
Warden, Perry Correctional Institution,)	
)	
Respondent.)	
_____)	

Petitioner Tracy Bennett is an inmate in custody of the South Carolina Department of Corrections (SCDC). Petitioner is housed at the Perry Correctional Institution in Pelzer, South Carolina. Petitioner, proceeding pro se, filed a petition for writ of habeas corpus on January 13, 2010. See 28 U.S.C. § 2254. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling.

On April 14, 2010, Respondent filed a motion for summary judgment. On April 15, 2010, an order was issued pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Petitioner of the summary judgment procedure and the possible consequences of failing to respond adequately. Petitioner filed no response to Respondent's motion for summary judgment.

On May 25, 2010, the Magistrate Judge issued a Report and Recommendation in which he recommended that the within action be dismissed for failure to prosecute. See Fed. R. Civ. P. 41(b). Petitioner filed no response to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo

determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within action is dismissed *with prejudice* pursuant to Rule 41(b) for failure to prosecute.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

June 18, 2010

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.